IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.345 OF 2003

Union of India through General Manager,
Central Railway, CSTM, Mumbai. ...Petitioner.

vs.

1.M/s.Godhandas Gobindram & another. ...Respondents.

Mr.Suresh Kumar, for Petitioner.

Mr.D.D.Madan with Mr.U.S.Samudrala, for Respondents

CORAM: D.K.DESHMUKH,J.

DATED: 28th March, 2005.

P.C.:-

1. By this petition, the petitioner challenges the Award made by the Sole Arbitrator. By that Award the learned Arbitrator has directed the petitioner to pay certain amount to the respondent no.1. The first challenge so far as the payment directed to be made on account of the additional work carried out of

the foundation by the respondent no.1 is concerned, the finding of the Arbitrator is that this item was not covered by clause 42(2) of the conditions of the Contract, because the material used for carrying out the work which was not provided in the contract, was different. The arbitrator has found, on the basis of agreement between the parties that M-25 concrete in raft foundation was not the part of the contract agreement, and therefore, the additional work of foundation carried out was covered as an extra item. The learned Counsel for the petitioner accepted this finding of fact. He submitted that clause 39 is conclusive and the decision of the Engineer in this regard is final. Perusal of the grounds raised in the petition shows that the ground based on the provisions of clause 39 has not at all been raised, therefore, the ground based on clause 39 cannot be allowed to be raised for the first time at the final hearing of the petition.

2. The next ground urged was in relation to the Award made against claim no.4. Perusal of the ground raised in the petition, however, shows that according to the petitioner, the Award made against the claim no.4 which is on the finding of facts recorded by the learned Arbitrator that the work of de-watering was done during the relevant period, is not correct. Perusal of the Award and the claim, both shows that the finding has been recorded by the learned Arbitrator on the basis of statement made before the Arbitrator and at the oral hearing. It being a finding of facts which is based on the statement made before the Arbitrator in my opinion, that finding cannot be disturbed.

3. The next challenge is in relation to the award made against the claim no.6, but again what is challenged is the finding of the facts recorded by the learned Arbitrator. After having heard learned counsel for the petitioner, I find that it cannot be said that there is no evidence on record to sustain the finding recorded by the learned Arbitrator as against claim no.6, and the said finding of the facts, therefore, cannot be disturbed by this Court in its limited jurisdiction under Section 34 of the Arbitration and Conciliation Act,1996.

4. The next challenge is in relation to the Award made against claim 9 in as much as the learned Arbitrator has awarded interest from the date of reference till the date of Award. It is submitted that under sub-section (7) of Section 31 of the Arbitration and Conciliation Act,1996, Arbitrator can award the interest for pre-reference period as also for the period during which the reference remained pending only when there is no contract to the contrary between the parties. The learned Counsel invited my attention to the provisions of Section 31(7)(a) of the Arbitration and Conciliation Act,1996, which provides that in case there is an agreement to the contrary, the Arbitrator shall not be entitled to award interest for the period during which a reference remained pending. The Award of interest by the learned Arbitrator on the awarded amount for the period during which the reference remained pending, is clearly contrary to the provision of Sub-section (7) of Section 31 of the Act, as also the clause nos.16(3) and 64(5) of the General Conditions of the Contract.

Therefore, the Award to that extent is required to be modified. In the result, therefore, the petition is disposed of in the following terms:-

(i) The Award made by the learned Arbitrator is modified to the extent that the award of interest on the awarded amount from the date of reference till the date of Award, it is held that the respondent no.1 shall not be entitled to any interest on the awarded amount from the date of reference till the date of Award. However, the respondent no.1 shall be entitled to the interest at the rate awarded by the learned Arbitrator from the date of Award till the date of realisation of the amount. There shall be no order as to costs

28.3.2005 ---